IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9959 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIKRAMSINH NAVUJI CHAVDA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9959 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the Police Commissioner, Ahmedabad City on 28th July, 2004 in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as bootlegger from 28th July, 2004, in pursuance of the above said order.

2. The grounds of detention as placed on record reveal that three cases under the Bombay Prohibition Act came to be registered against the petitioner at Amraiwadi Police Station on 4th April, 2004, at Himmatnagar Town Police Station on 28th April, 2004 and at Amraiwadi Police Station on 7th June, 2004. It is alleged that in above said three cases, the petitioner was found in possession of prohibited foreign liquor. The detaining authority considered exhaustively and thoroughly the investigation papers in all these three cases registered against the petitioner. After considering this material, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting illegal foreign liquor and was bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that the illegal activities of the petitioner was prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority also concluded that the illegal activities of the petitioner was required to be prevented forthwith. After considering other remedies available in general law, the detaining authority came to the conclusion that there was no other alternative, except to pass the order of detention of the petitioner under the PASA Act, to prevent his illegal activities forthwith. Therefore, the detaining authority passed an order of detention of the petitioner, which is under challenge in this petition.

3. Learned advocate Ms.Banna Dutta for the petitioner and learned AGP Mrs.H.B.Punani for the respondent No.3 were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public

health was adversely affected.

5. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible material indicating that the activities of the petitioner directly or indirectly were causing or were likely to cause any hard, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to life, property or the public health. While going through this exercise, the detaining authority is also required to draw a clear line between "breach of law and order" and "breach of public order".

6. Now referring to three cases registered against the petitioner and the investigation papers as placed on record, it is clear that the cases against the detenu were filed on the ground that he was dealing in liquor. It is also necessary that while coming to the conclusion as to whether a given activity is affecting the public order or not. The fall out, reach and impact of such activity has to be considered. It is required to be taken into consideration also that whether potentiality of the activities alleged were capable of disturbing the public order. The cases registered against the petitioner and the investigation carried on, in these three criminal cases do not disclose that by the activities of the petitioner, the public at large or section of a public was involved so as to cause harm, danger or alarm or feeling of insecurity among the general public or section thereof. Nothing is turned out through investigation papers in all these three cases that the activities of the petitioner were grave or wide spread, danger to life, property or the public health. The cases indicate that some liquor was found in possession of the petitioner in breach of law and, therefore, the cases came to be registered against the petitioner. At the most, the activities reveal through the investigation in three cases may be the act of breach of law and order and cannot have any bearing on the question of maintenance of public order. For the cases, filed against the petitioner, he will be tried and may be punished, if he is found guilty, but surely the act constituting the offences cannot be said to have affected, the even tempo of the life of community. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of maintenance of public order is not legal, valid and in accordance with law. Therefore, the order under challenge is required to be quashed and set aside only on

this ground alone.

7. In the result, in view of the above discussion, this Special Civil Application is allowed. The order under challenge passed by the Police Commissioner of Police, Ahmedabad City on 28th July, 2004 against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner VIKRAMSINH NAVUJI CHAVDA is hereby ordered to be set at liberty forthwith, if he is not required to be detained in Jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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